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**SECRETARY, BOARD OF
OIL, GAS & MINING**

Attorneys for Utah Division of Oil, Gas and Mining

BEFORE THE UTAH BOARD OF OIL, GAS AND MINING

In the matter of: reclamation at the BMC
Seep's Ridge Road Pit mine, permit no.
S/047/0119, operated by Blue Mountain
Crushing, LLC, located in the Uintah and
Ouray Reservation in southeastern
Uintah County, Utah

NOTICE OF AGENCY ACTION

Docket No.
Cause No. S/047/0119

The Utah Division of Oil, Gas and Mining submits this Notice of Agency Action for consideration by the Utah Board of Oil, Gas and Mining.

Introduction

This Notice of Agency Action addresses violations of the Mined Land Reclamation Act by Respondent Blue Mountain Crushing, LLC (BMC). BMC is the operator of record of the BMC Seep's Ridge Road Pit mine (the Mine), permit no. S/047/0119. The Mine is located in southeastern Uintah County, specifically the southeast ¼ of the southeast ¼ of Section 26, Township 15 South, Range 23 East, Salt Lake Base and Meridian.

The Utah School and Institutional Trust Lands Administration (SITLA) owns both the surface estate and the mineral estate where the Mine is located. On November 4, 2013, the Director of SITLA approved BMC's SITLA application for a Mineral Materials Permit, which expired on November 4, 2014.

In November 2013, the Utah Division of Oil, Gas and Mining (the Division) notified BMC that it approved BMC's Notice of Intention to Commence Small Mining Operations (NOI). The related reclamation surety was in the form of a \$62,200 bond, underwritten by Fidelity and Deposit Company of Maryland (Fidelity). Fidelity appointed Atkinson-Leavitt Insurance Agency, Inc. (Atkinson-Leavitt) to act as its agent.

In 2014, Fidelity sent, copying Atkinson-Leavitt and BMC, a Notice of Cancellation to the Division cancelling the surety bond.¹ Under the terms of the bond agreement, Fidelity's liability ended 90 days after the Division received the Notice of Cancellation, but Fidelity remains liable for BMC's reclamation obligations incurred prior to the effective termination date (here, October 29, 2014).

Under the terms of the reclamation contract, BMC was required to provide a replacement surety within 60 days after the Division's receipt of the cancellation notice, and the Division reminded BMC of that fact by letter dated August 13,

¹ Fidelity intended that the cancellation become effective on October 25, which was 86 days after the Division received the notice. However, the surety bond agreement required 90 days written notice of cancellation. As such, the cancellation of the bond was not effective until October 29, 2014.

2014. When BMC failed to provide a replacement surety by the September 28 deadline, the Division issued BMC a Cessation Order (CO), which required reclamation of the site and made clear that failure to reclaim would result in forfeiture of the original bond. The Division assessed a civil penalty of \$396. To date, BMC has neither replaced the surety nor paid this fine. As of March 31, 2015, the Mine had not been reclaimed as required by the outstanding Cessation Order.

Further, BMC's failure to abate the CO automatically leads to an imposition of a Failure to Abate Cessation Order (FTACO) by operation of law. Utah Admin. Code R647-7-103.4. The Division's practice is to charge the statutory minimum of \$750 per day of continuing violation, and to cap liability at 30 days. Thus, in addition to the \$396 due under the CO, BMC owes a civil penalty of \$22,500 under the FTACO.

Under the terms of the surety agreement, Fidelity has the option either to conduct the reclamation itself or to remit the principal of the bond to the Division. In April and May of 2015, the Division twice notified Atkinson-Leavitt and Fidelity of BMC's failure to reclaim and asked whether Fidelity would reclaim or remit the funds. Neither Atkinson-Leavitt nor Fidelity made their election. To date, Fidelity has not reclaimed the site, nor has it provided the funds to the Division to conduct reclamation.

Through this action, the Division moves the Board of Oil, Gas and Mining to: (1) order forfeiture of the \$62,200 reclamation surety; (2) order the Division to reclaim the mine site with the forfeited surety; and (3) request that the Attorney General and the Division seek the \$22,896 in civil penalties in a judicial action.

Legal Background

The Utah Mined Land Reclamation Act (the Act), Utah Code § 40-8-1 to -23, is designed to balance the necessity of extracting minerals required by society against the interests of safety, welfare, and subsequent land use. Its

express purpose mandates reclamation of lands affected by mining. *Id.* § 40-8-3. To that end, the Act divides the mining world into two camps: large mines and small mines. Small mines in unincorporated areas of the State are those which disturb ten surface acres or less, and face the lower regulatory burden of Utah Administrative Code Rule 647-3. Large mines, on the other hand, are subject to Utah Administrative Code Rule 647-4, which imposes more extensive planning, bonding, and permitting requirements.

Reclamation standards. The Act requires mine operators for both large and small mines to conduct reclamation and bear any costs and expenses thereof. Utah Code § 40-8-12.5. Utah Administrative Code Rule 647-3-109 details the reclamation requirements for small mine sites. In general, the reclamation Rules aim to protect public safety and welfare, address environmental concerns, and restore the land to ensure successful future use. To this end, the Rules outline specific conditions that must be met before a site is considered reclaimed that all mine operators agree to meet when they undertake a mining operation in Utah.

Reclamation surety. Some of the most important reclamation rules are the surety requirements in section 14 of the Act, Utah Code § 40-8-14, and in Utah Administrative Code Rule 647-3-111. First, Section 14 of the Act requires that the operator provide a surety to the Division. The surety can be held in the form of cash, a bond, or a similar equivalent. Second, under Rule 647-3-111, the operator must submit a reclamation contract with the required surety. These two requirements work in tandem to ensure either that the mine site is properly reclaimed by the operator after mining activity ceases, or in the alternative that money is available for the Division to complete the reclamation itself. A surety is required until the Division determines that reclamation is complete, though partial release of the surety is allowed upon partial completion of reclamation as the Division sees fit. Utah Admin. Code R. 647-3-111.5.

Failure to reclaim. Under Rules 647-3-112 and 647-4-114 mine operators for both small and large mines are liable for costs when they fail or refuse to

conduct reclamation. The Rules for small mines require notice and hearing and confer various powers on the Board that pertain to this case. First, the Board may order forfeiture of the surety. Utah Code § 40-8-14(6)(a); Utah Admin. Code R. 647-3-112.3. Second, the Board may order that reclamation be conducted by the Division. Utah Admin. Code R. 647-3-112.1. In addition, the Board may request that civil penalties owed under the Act be recovered in a civil action brought by the Attorney General. Utah Code § 40-8-9.1(4).

Jurisdiction and Procedure

1. The Division brings this matter to the Board under the Utah Mined Land Reclamation Act, Utah Code §§ 40-8-1 to -23. The Act gives the Board and Division “jurisdiction and authority over all persons and property, both public and private, necessary to enforce this chapter.” *Id.* § 40-8-5(1)(a). The Act also gives the Board the power and the duty to hold hearings, to issue orders based on those hearings, and to “do all other things and take such other actions within the purposes of this act as may be necessary to enforce its provisions.” *Id.* § 40-8-6(2), (4).
2. Pursuant to the Rules of the Board, unless otherwise ordered, this matter will be heard at the regularly scheduled Board Hearing on December 9, 2015 at 9:00 A.M. in the auditorium of the Department of Natural Resources building at 1594 West North Temple, Salt Lake City, Utah.
3. This proceeding will be conducted formally according to the provisions of the Board’s administrative rules found in Utah Administrative Code Rule 641 and sections 63G-4-204 through 63G-4-209 of the Utah Code.
4. This proceeding may affect property and legal interests of the operators and other named individuals associated with the mine. Each is a “respondent” as defined under Utah Administrative Code Rule 641-100-200.
5. The Division names Blue Mountain Crushing, LLC, Alek Cusick in his official capacity as BMC’s Managing Member, Fidelity and Deposit Company of

Maryland, and Atkinson-Leavitt Insurance Agency, LLC as respondents in this proceeding.

6. Under Utah Administrative Code Rules 641-104-131.600 and 641-104-151, a party who fails to file a response or attend or participate in the hearing may be held in default.

Allegations

7. In October 2013, Blue Mountain Crushing, LLC (BMC) filed a Notice of Intention to Commence Small Mining Operations (an NOI) at the BMC Seep's Ridge Road Pit mine (the Mine), which is located in the Uintah-Ouray Reservation in the southeast corner of Uintah County, Utah. Specifically, the Mine is located in the southeast $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of Section 26, Township 15 South, Range 23 East, Salt Lake Base and Meridian.

8. The Utah School and Institutional Trust Lands Administration (SITLA) owns both the surface estate and the mineral estate where the Mine is located. SITLA approved BMC's Mineral Materials Permit application on November 4, 2013. That permit expired on November 4, 2014.

9. On November 5, 2013, the Division notified BMC that the NOI was complete, and that the Division approved the reclamation surety for the Mine.

10. Fidelity and Deposit Company of Maryland (Fidelity) is the underwriter of the reclamation surety in the amount of \$62,200. Under the bond agreement, Fidelity appointed Atkinson-Leavitt Insurance Agency, Inc. (Atkinson-Leavitt) to act on its behalf.

11. On July 30, 2014, the Division received a Notice of Cancellation from Fidelity cancelling the surety for the Mine. The cancellation became effective 90 days later, on October 29, 2014.

12. Under the terms of the bond, Fidelity remains liable for disturbance that existed at the time of the bond's effective cancellation date, October 29, 2014.

13. BMC's reclamation contract with the Division requires that BMC provide a replacement surety within 60 days after the Division's receipt of the cancellation notice. Thus, BMC was required to provide a replacement surety by September 28, 2014.

14. BMC failed to provide a replacement surety by September 28, 2014, and has not provided one to date.

15. On October 29, 2014, the Division issued BMC a Cessation Order (CO) (MC-2014-60-7) for failing to provide a replacement surety.

16. The CO required reclamation of the site by November 30, and noted that failure to reclaim would result in forfeiture of the reclamation bond. The Division assessed penalties associated with the CO in the amount of \$396.

17. On March 31, 2015, the Division conducted an inspection, and found that the Mine had not been reclaimed.

18. Under Utah Administrative Code Rule 647-7-103.4, BMC's failure to abate the CO automatically leads to an imposition of a Failure to Abate Cessation Order (FTACO) by operation of law.

19. The Division's practice is to charge the statutory minimum of \$750 per day of continuing violation, and to cap liability at 30 days. Thus, BMC owes a civil penalty of \$22,500 under the FTACO.

20. By letters dated April 7 and May 20, 2015, the Division notified Atkinson-Leavitt and Fidelity that BMC had failed to reclaim the Mine, and noted that Fidelity remains liable for reclamation under the terms of the bond.

21. The letters requested notification as to whether Fidelity would reclaim the site or provide funds to the Division for it to reclaim. Neither Atkinson-Leavitt nor Fidelity has responded to the Division.

22. Fidelity remains liable for the reclamation of any disturbance at the site that existed as of October 29, 2014.

23. Forfeiting the surety will allow the Division to contract for reclamation of the site.
24. BMC never paid, and still owes, \$396 in civil penalties associated with the outstanding CO.
25. In sum, BMC has failed to reclaim the site and Fidelity has failed to reclaim or provide funds to the Division for it to reclaim as required by Utah law. This administrative action seeking forfeiture of the surety is necessary to ensure public safety, protect Utah's environment, and provide for beneficial subsequent land use at the BMC Seep's Ridge Road Pit mine.

Request for Action

Based on practice and rule, the Division moves the Board to take the following actions:

- A. Order forfeiture of the \$62,200 surety for reclamation under Utah Code § 40-8-14-6(a)-(b) and Utah Administrative Code Rule 647-3-112.
- B. Order the Division to reclaim the BMC Seep's Ridge Road Pit mine using the forfeited surety under Utah Code § 40-8-12.5 and Utah Administrative Code Rule 647-3-112.
- C. Request that the Attorney General and the Division seek civil penalties of \$22,896 (\$396 for the CO and \$22,500 for the FTACO) in a judicial action under Utah Code § 40-8-9.1(4).
- D. Grant any other just and equitable relief in these circumstances.

Respectfully submitted on the 20th day of October, 2015.

UTAH DIVISION OF OIL, GAS AND MINING



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Certificate of Service

I certify that I caused to be served the above **Notice of Agency Action** to the following parties on the 27th day of October, 2015:

By certified mail:

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